

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

GECCMC 2005-C1 PLUMMER STREET
OFFICE LIMITED PARTNERSHIP,

Plaintiff and Respondent,

v.

NRFC NNN HOLDINGS, LLC,

Defendant and Appellant.

B229879

(Los Angeles County
Super. Ct. No. BC419513)

ORDER MODIFYING OPINION
AND DENYING REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on March 29, 2012, be modified as follows:

1. On page 2, in the second paragraph, the words “but not by any other” are replaced with the words “and certain other enumerated items but not by the” and the words “in general” are inserted after the word “Borrower” so the sentence reads:

The loan was a non-recourse loan, secured by the properties and certain other enumerated items but not by the assets of Borrower in general, subject to exceptions for certain forms of borrower misconduct.

2. On page 5, the final sentence of the last paragraph (including footnote 3) is deleted and the following is inserted as footnote 3 at the end of that paragraph:

On appeal, Plummer contends that the Federal Deposit Insurance Corporation (FDIC) terminated the leases after succeeding to Borrower’s rights thereunder. In the trial court, however, Plummer expressly

disclaimed any reliance on such a contention and argued, to the contrary, that the FDIC's "repudiation" of the leases was not "valid." Plummer may not assert a new theory of liability on appeal. (*Beroiz v. Wahl* (2000) 84 Cal.App.4th 485, 498, fn. 9.) Plummer also argues that the guaranty was triggered when Plummer itself terminated the leases after buying the properties through a foreclosure sale, because Plummer (in its capacity as lender) did not consent to Plummer's termination of the leases (in its capacity as lessor). It is undisputed, however, that Plummer purchased the properties after filing the operative complaint, which consequently does not allege Plummer's purchase and termination of the leases as a basis for liability. Plummer's termination is consequently irrelevant to the parties' summary judgment motions. (*Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74 ["It is well established that the pleadings determine the scope of relevant issues on a summary judgment motion"].) In any event, Plummer did consent to Plummer's own termination of the leases.

There is no change in the judgment.

Respondent's petition for rehearing is denied.

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MALLANO, P. J.

ROTHSCHILD, J.

JOHNSON, J.